



1 income tax pursuant to Title 43. The Legislature did further amend Title 43 to allow a subtraction from  
2 Arizona gross income *for State or federal* retirement benefits up to \$2,500.<sup>1</sup>

3 Manuel and Mary Lou Torres ("Appellants") became Arizona State employees prior to 1989.  
4 Manuel Torres was a public employee in Arizona from 1970 until his retirement in 2000. Mary Lou Torres  
5 began her public employment in Arizona in 1966 and has not yet retired. For tax year 2000, Appellants  
6 filed Arizona individual income tax returns and paid taxes on retirement income received by Manuel  
7 Torres under the Arizona State Retirement Plan.

8 Appellants subsequently filed amended State returns for 2000<sup>2</sup> claiming a refund for tax paid on  
9 the retirement income. Appellants also filed a "Class Income Tax Refund Claim" with the Arizona  
10 Department of Revenue (the "Department") purporting to represent a class of individuals who were  
11 employees of the State of Arizona, before the 1989 amendment of the income tax statutes, who either  
12 before or after that date retired or will receive retirement benefits from the State of Arizona (the "Class").  
13 Additionally, Appellants filed a class action in Superior Court against the State for breach of contract,  
14 unjust enrichment, takings without just compensation and promissory estoppel.

15 The Department denied Appellants' claim for refund of income taxes, as well as their request for  
16 class representation. After unsuccessfully, protesting the decision before the Department, Appellants  
17 now timely appeal to this Board. They are seeking certification of the Class and refund for tax Appellants  
18 paid on their 2000 retirement benefits.

19 DISCUSSION

20 The issues before the Board are 1) whether the Board may certify the Class; and, 2) whether  
21 Appellants are entitled to the refund requested.

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24 <sup>1</sup> The subtraction is codified at A.R.S. § 43-1022.

25 <sup>2</sup> Appellants actually claimed refunds for tax years 2001 and 2002 as well as 2000. However, Appellants filed their  
refund claims in November 2001. A refund claim must identify the amount of the refund requested and the specific  
tax period involved. A.R.S. § 42-1118(E). Appellants' refund claims cannot include claims for unknown amounts on  
tax that had not yet been paid.

1 Few principles of law are as well established as the proposition that administrative agencies, as  
2 entities created by the legislature, have only such powers as are expressly granted to them by the  
3 legislature, or as may be necessarily implied from the applicable statutes. *Boyce v. City of Scottsdale*,  
4 157 Ariz. 265, 756 P.2d 935 (App. 1988). They are part of the executive branch of government, not the  
5 judicial branch. In determining the nature and scope of an agency's powers, its enabling statutes are to  
6 be strictly construed to preclude the exercise of power not expressly granted. Any reasonable doubt as to  
7 the existence of an implied power should be resolved against the agency. In considering the taxpayer's  
8 appeals from the Department's denial of class certification to them, this Board must therefore consider  
9 both the powers delegated to the Department, whose actions the Board reviews, and to the Board itself.  
10 This Board finds nothing in the statutes authorizing class actions in tax refund matters. The Board finds  
11 authority for class actions only in Arizona's Rules of Court. These rules dealing with class actions are by  
12 their own terms only applicable to the judicial branch of government and not to executive agencies.

13 Nor, in the Board's opinion, can the statute authorizing the Board to establish its own "rules of  
14 practice and procedure" be reasonably construed to empower this Board to permit an individual taxpayer,  
15 in an appeal from an adverse ruling of the Department on his or her individual refund claim, to undertake  
16 to represent a class of thousands of other taxpayers in the appeal proceedings. For the Board to so take  
17 unto itself such a power would be contrary to the plainly worded and mandatory statutes prescribing  
18 refund procedures before both the Department and the Board itself. It would permit the addition of  
19 thousands of parties and claims never processed before the Department as required by the statute. The  
20 Board does not see its statutory powers as broad enough to add so greatly to its own jurisdiction – much  
21 less to negate statutes and rules governing procedures before another agency. In the interests of justice,  
22 a court may find it equitable to take such a step, but this Board is not a court and does not have equitable  
23 powers.

24 Undoubtedly, a class-action procedure before the Department and the Board – at least in  
25 extraordinary cases such as this one – would, as Appellants argue, greatly benefit the taxpayers in the  
Class by relieving them from making individual applications for refunds in the event the Board were to  
decide for the Appellants on the substantive issue here involved. Because this Board cannot expand the

1 Department or the Board's authority beyond that granted by the Legislature, any such relief will have to  
2 come from that body or from the courts.

3 Apart from the certification argument, Appellants contend that Arizona made a contractual  
4 promise that, as part of their state employment compensation, their benefits would not be subject to  
5 Arizona income taxation. Because the promise of a tax-free pension was a part of their employment  
6 contract, Appellants argue that the State cannot now impose a tax on that income.<sup>3</sup>

7 The "power of taxation shall never be surrendered, suspended or contracted away." Ariz. Const.  
8 art. 9, § 1. Therefore, the pre-1989 statutes cannot be construed as granting permanent tax immunity to  
9 State retirees hired before 1989. Although section 12 of article 9 of the Arizona Constitution allows the  
10 State to create tax exemptions, section 1 of article 9 prevents the State from making such exemptions  
11 permanent, and the Legislature is free to amend or repeal tax exemptions.

12 The language of the statutes is clear. Laws 1989, Chapter 312 amended the retirement statutes  
13 found in Title 38 to eliminate the tax exemption for State retirement benefits, specifically providing that  
14 benefits, annuities and pensions received after December 31, 1988 shall be subject to tax pursuant to  
15 Title 43.

16 In any event, Appellants are, in effect, arguing that Arizona breached their employment contract.  
17 A breach of contract action belongs in Superior Court, not at this Board, which adjudicates tax matters.  
18 Appellants have, in fact, filed an action in Superior Court based on several legal theories under contract  
19 law, and any remedy that may be available to them must come from that court.

#### 20 CONCLUSIONS OF LAW

21 1. The Board may not certify the Class. See A.R.S. §§ 42-1252 and 1253; *Boyce v. City of*  
22 *Scottsdale*, 157 Ariz. 265, 756 P.2d 935 (App. 1988).

23 2. Appellants are not entitled under Arizona income tax statutes to a refund for tax paid on their  
24 State retirement pension for tax year 2000. See Laws 1989, Chapter 312.

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<sup>3</sup> Appellants maintain that the Department may only impose income tax on the retirement benefits of State employees beginning employment after the 1989 statutory amendment.

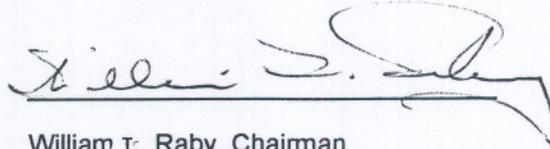
ORDER

THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the Department is affirmed.

This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer, unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

DATED this 16th day of December, 2003.

STATE BOARD OF TAX APPEALS



William L. Raby, Chairman

WLR:alw

CERTIFIED

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